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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,901	09/12/2003	Steve Klotz	15436.252.2.1	8990
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ERIC L. MASCHOFF WORKMAN NYDEGGER 1000 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111			EXAMINER TURNER, ASHLEY D	
			ART UNIT 2154	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/661,901

Applicant(s)

KLOTZ ET AL.

Examiner

Ashley D. Turner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/12/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/30/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claims, 2,7,9,12,13,15,21 are objected to because of the following informalities:

In claim 6 line 1 " analyzing order of events " applicants should change correction to – analyzing the order of events – to improve the clarity of the claim language.

In claim 7 line 6 " each analyzer " applicants should change correction to – each said analyzer – to improve the clarity of the claim language.

In claim 7 line 7 " each analyzer " applicants should change correction to – each said analyzer – to improve the clarity of the claim language.

In claim 9 the phrase " capturing trace data" applicants should change correction to – capturing the trace data – to improve the clarity of the claim language.

In claim 12 the phrase " analyzing device addresses" applicants should change correction to – analyzing the device addresses – to improve the clarity of the claim language.

In claim 13 the phrase " analyzing order of events" applicants should change correction to – analyzing the order of events – to improve the clarity of the claim language.

In claim 15 the phrase " determine the topology " applicants should change correction to – determine a topology – to improve the clarity of the claim language.

In claim 13 the phrase " ordering of events" applicants should change correction to – the ordering of events – to improve the clarity of the claim language.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sharon (US 6,205,122 B1).

Referring to claim 1, Sharon discloses the limitations of a method for determining network topology (Abstract), comprising capturing and storing channelized data with a network analyzer (Col. 7 lines 63-66 Col. 8 lines 20-28); interleaving the channelized data into a unitary data stream in chronological order (Col. 8 lines 45-60); and processing the unitary data stream to extrapolate indicators of network elements [Abstract].

Referring to claim 9, Sharon discloses the limitations of capturing trace data further comprising storing channelized data for subsequent processing (Col. 7 lines 63-66 Col. 8 lines 20-28).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8, and 16 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Sharon (US 6,205,122 B1) in view of Ikeda (US 2003/0063571 A1).

Referring to claim 2, Sharon discloses all the limitations of claim 2 which are described above. Sharon did not disclose the limitation of processing the unitary data stream further comprises determining a left and right topology from the network analyzer. The general concept of processing the unitary data stream further comprises determining a left and right topology from the network analyzer is well known in the art as taught by Ikeda. Ikeda discloses processing the unitary data stream further comprises determining a left and right topology from the network analyzer (Abstract). It is well known in the art at the time of the invention to modify Sharon to include processing the unitary data

stream further comprises determining a left and right topology from the network analyzer in order to determine the entire network topology.

Referring to claim 16 Sharon discloses all the limitations of claim 16 which is described above. Sharon did not disclose combining the left and right channel data into a unitary data stream. The general concept of combining the left and right channel data into a unitary data stream is well known in the art as taught by Ikeda. Ikeda discloses combining the left and right channel data into a unitary data stream (Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sharon to include combining the left and right channel data into a unitary data stream in order to determine the entire network topology.

Claims 3-6 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Sharon (US 6,205,122 B1) (U.S.2006/0083511 A1) in view of Ikeda (US 2003/0063571 A1) further in view of Warren (US 2004/0081186 A1).

Referring to claim 3, Sharon and Ikeda disclose all the limitations of claim 3 which is described above. Ikeda also discloses ordering of events in the unitary data trace to determine the presence of network elements [0031]. Edmunds did not disclose analyzing ordered sets, source and destination Ids. The general concept of analyzing ordered sets, source and destination Ids is well known in the art as taught by Warren.

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Warren discloses analyzing ordered sets, source and destination Ids [0240], [0161]. It would have been obvious to one of ordinary skill in the art to modify Sharon to include analyzing ordered sets, source and destination Ids in order to monitor the data going through the network.

Referring to claim 4, Sharon, Ikeda, and Warren discloses all the limitations of claim 4 which is described above. Sharon and Ikeda did not disclose analyzing open and close commands in the unitary data trace to determine the presence of a loop. The general concept of analyzing open and close commands in the unitary data trace to determine the presence of a loop is well known in the art as taught by Warren. Warren discloses analyzing open and close commands in the unitary data trace to determine the presence of a loop (Warren; [0015]). It would be obvious to one of ordinary skill in the art at the time of the invention to modify Sharon to include analyzing open and close commands in the unitary data trace to determine the presence of a loop in order to send and receive data back to the terminal.

Referring to claim 5 Sharon, Ikeda, and Warren discloses all the limitations of claim 5 which is described above. Sharon did not disclose analyzing device addresses in the unitary data trace to determine the presence of switches. The general concept of analyzing device addresses in the unitary data trace to determine the presence of

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switches is well known in the art as taught by Warren. Warren discloses analyzing device addresses in the unitary data trace to determine the presence of switches [0592]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sharon invention to include analyzing device addresses in the unitary data trace to determine the presence of switches in order to provide a device that has control of the loop.

Referring to claim 6 Sharon, Ikeda, and Warren discloses all the limitations of claim 6 which is described above. Sharon did not disclose analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches. The general concept of analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches is well known as taught by Warren. Warren discloses analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches [0411]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sharon to include analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches in order to provide a device that has control of the loop.

Claim 7 is rejected under 35 U.S.C. 103 (a) as being unpatentable Ikeda (US 2003/0063571 A1) in view of Warren (US 2004/0081186 A1).

Referring to claim 7 Ikeda disclose a method for determining network topology during a network analysis process, positioning at least one network analyzer in communication with the network (Abstract); capturing trace data from a first and second channel on each of the analyzers (Abstract); determining a first topology corresponding to the first channel of each analyzer (Fig 21 A); determining a second topology corresponding to the second channel of each analyzer (Fig .21 A and Fig 21 B.), combining the first and second topologies from each of the analyzers(Fig. 21 A [0155]. Ikeda did not disclose deleting duplicate topology entries from the combined topology to generate the network topology. The general concept of deleting duplicate topology entries from the combined topology to generate the network topology is well known in the art as taught by Pulsipher. Pulsipher discloses deleting duplicate topology entries from the combined topology to generate the network topology (Col. 10 lines 55-65 and Col. 11 lines 1-6). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ikeda to include deleting duplicate topology entries from the combined topology to generate the network topology in order to derive a global view of the network.

Referring to claim 10 Ikeda and Warren discloses all the limitation of claim 8 which are described above. Ikeda did not disclose determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device

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addresses. The general concept of determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses is well known in the art as taught by Warren. Warren discloses determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses (Abstract). [0160], [0161], [0202]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ikeda to include determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses in order to monitor the data going through the network.

Referring to claim 11, Ikeda and Warren disclose all the limitations of claim 11 which is described above. Ikeda did not disclose analyzing open and close commands in the unitary data trace to determine the presence of a loop. The general concept of analyzing open and close commands in the unitary data trace to determine the presence of a loop is well known in the art as taught by Warren. Warren discloses analyzing open and close commands in the unitary data trace to determine the

presence of a loop (Warren; [0015]). It would be obvious to one of ordinary skill in the art at the time of the invention to modify Ikeda to include analyzing open and close commands in the unitary data trace to determine the presence of a loop in order to send and receive data back to the terminal.

Referring to claim 12 Ikeda and Warren discloses all the limitations of claim 12 which is described above. Ikeda did not disclose analyzing device addresses in the unitary data trace to determine the presence of switches. The general concept of analyzing device addresses in the unitary data trace to determine the presence of switches is well known in the art as taught by Warren. Warren discloses analyzing device addresses in the unitary data trace to determine the presence of switches (Warren; [0592]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ikeda invention to include analyzing device addresses in the unitary data trace to determine the presence of switches in order to provide a device that has control of the loop.

Referring to claim 13 Ikeda and Warren discloses all the limitations of claim 13 which is described above. Ikeda did not disclose analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches. The general concept of analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches is well known as taught by Warren. Warren discloses analyzing

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ordering of events in the unitary data trace to determine the presence of stealth mode switches (Warren; [0411]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ikeda to include analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches in order to provide a device that has control of the loop.

Claim 14 is rejected under 35 U.S.C. 103 (a) as being unpatentable Ikeda (US 2003/0063571 A1) in view of Warren (US 2004/0081186 A1) further in view of Pulsipher (5,948,055).

Referring to claim 14, Ikeda and Warren disclose all the limitations of claim 14 which is described above. Ikeda did not disclose displaying the network topology to a user via a graphical user interface. The general concept of displaying the network topology to a user via a graphical user interface is well known in the art as taught by Pulsipher. Pulsipher discloses displaying the network topology to a user via a graphical user interface (Abstract). It would have been obvious to one of ordinary skill in the art to modify Ikeda to include displaying the network topology to a user via a graphical user interface in order to display the results of the topology the user requested.

Claim 15 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Sharon (US 6,205,122 B1) in view of Pulsipher (5,948,055).

Referring to claim 15 Sharon discloses analyzing a network to determine the topology of the network (Abstract), positioning at least one analyzer in communication with the network; capturing a left channel and a right channel data trace from each of the at least one analyzers (Abstract); extrapolating network device presence indicators from the left and right channel data (Abstract); and determining the network topology from the network device indicators (Abstract). Sharon did not disclose displaying the determined network topology to a user. The general concept of displaying the network topology to a user is well known in the art as taught by Pulsipher. Pulsipher discloses displaying the network topology to a user (Abstract). It would have been obvious to one of ordinary skill in the art to modify Ikeda to include displaying the network topology to a user in order to display the results of the topology the user requested.

Claim 8 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Ikeda (US 2003/0063571 A1) in view of Sharon (US 6,205,122 B1).

Referring to 8, Ikeda discloses all the limitations of claim 8 which are described above. Ikeda did not disclose wherein positioning the at least one network analyzer positioning the analyzers such that bi-directional communication between each network element may be captured in a data trace. The general concept of positioning the at least one network analyzer positioning the analyzers such that bi-directional communication

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between each network element may be captured in a data trace is well known in the art as taught by Sharon. Sharon discloses positioning the at least one-network analyzer positioning the analyzers such that bi-directional communication between each network element may be captured in a data trace (Abstract).

Claim 18 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Sharon (US 6,205,122 B1) in view of Ikeda (US 2003/0063571 A1) further in view of Pulsipher (5,948,055) further in view of Warren (US 2004/0081186 A1).

Referring to claim 18 Sharon, Ikeda and Pulsipher disclose all the limitation of claim 18 which are described above. Sharon, Ikeda, and Pulsipher did not disclose determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses. The general concept of determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses is well known in the art as taught by Warren. Warren discloses determining the first and second topology analyzing ordered

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sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses (Abstract). [0160], [0161], [0202]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ikeda to include determining the first and second topology analyzing ordered sets, source and destination identifications, device addresses, and ordering of events in the trace data to determine the presence of network elements that correspond to the ordered sets, source and destination identifications, and device addresses in order to monitor the data going through the network.

Referring to claim 19, Sharon, Ikeda and Pulsipher disclose all the limitations of claim 19 which is described above. Sharon Ikeda, and Pulsipher did not disclose the ordered sets are analyzed to determine the presence of a loop on the network. The general concept of analyzing open and close commands in the unitary data trace to determine the presence of a loop is well known in the art as taught by Warren. Warren discloses the ordered sets are analyzed to determine the presence of a loop on the network [0015]. It would be obvious to one of ordinary skill in the art at the time of the invention to modify Sharon to include the ordered sets are analyzed to determined the presence of a loop on the network in order to send and receive data back to the terminal.

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Referring to claim 20 Sharon, Ikeda, and Pulsipher discloses all the limitations of claim 20 which is described above. Sharon, Ikeda, and Pulsipher did not disclose the device addresses are analyzed to determine the presence of switches on the network. The general concept of the device addresses are analyzed to determine the presence of switches on the network is well known in the art as taught by Warren. Warren discloses analyzing device addresses in the unitary data trace to determine the presence of switches [0592]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sharon invention to include the device addresses are analyzed to determine the presence of switches on the network in order to provide a device that has control of the loop.

Referring to claim 21 Sharon, Ikeda, and Pulsipher discloses all the limitations of claim 21 which is described above. Sharon, Ikeda, and Pullsipher did not disclose ordering of events is analyzed to determine the presence of stealth mode switches on the network. The general concept of ordering of events is analyzed to determine the presence of stealth mode switches on the network is well known as taught by Warren. Warren discloses analyzing ordering of events in the unitary data trace to determine the presence of stealth mode switches [0411]. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sharon to include ordering of events is analyzed to determine the presence of stealth mode switches on the network in order to provide a device that has control of the loop.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashley d. Turner whose telephone number is 571-270-1603. The examiner can normally be reached on Monday thru Friday 7:30a.m. - 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-270-2603.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patent Examiner:


Ashley Turner

Date: 7/23/2007

Supervisory Patent Examiner

Nathan Flynn

Date: _____

